

VINOD NICHANI|SBN 277607
NICHANI LAW FIRM
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Attorney for
VAHE TASHJIAN, INDIVIDUALLY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

In re

DUTCHINTS DEVELOPMENT, LLC

Debtor.

Case No.: 21-51255 MEH

Chapter 7

MOTION TO WITHDRAW AS ATTORNEY
OF RECORD FOR RESPONSIBLE
INDIVIDUAL VAHE TASHJIAN;
MEMORADUM OF POINTS AND
AUTHORITIES IN SUPPORT

Hearing:

Date: TBD
Time: TBD
Location: Courtroom 11
280 S. First Street
San Jose, CA

Hon. M. Elaine Hammond

TO THE HONORABLE M. ELAINE HAMMOND, UNITED STATES BANKRUPTCY
JUDGE:

Vinod Nichani ("Counsel"), counsel for Vahe Tashjian, individually, hereby moves the
above-entitled Court for an Order Authorizing Withdrawal of Counsel. Vahe Tashjian
("Tashjian") is the responsible individual for the Debtor herein.

1 This Motion is made and based upon: this Motion and Memorandum of Points and
2 Authorities, and the Declaration of Vinod Nichani, and other such argument, authority and
3 evidence as may be presented at the hearing.

4 This Motion is made pursuant to California Rule of Professional Conduct 1.16(b)(4), on
5 the grounds that certain irreconcilable differences have arisen between Tashjian and Counsel and
6 that Counsel cannot represent Tashjian further in this matter.

7 To that end, Vinod Nichani respectfully represents:

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9 **I. BACKGROUND**

10 On September 29, 2021, the Debtor herein Dutchints Development LLC (“Dutchints”)
11 filed voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy
12 Code”), thereby commencing the above-captioned case (Dkt. 1). On October 25, 2021, by order
13 of this Court, the designation of Tashjian as Responsible Individual for the Debtor was approved
14 (Dkt. 35). By order dated November 9, 2021, the Court approved Dutchints’ retention of Geoff
15 Wiggs dba Law Offices of Geoff Wiggs to represent Dutchints (Dkt. 53). By order dated October
16 25, 2021, Mr. Vahe Tashjian, Managing Member of Dutchints, was designated Responsible
17 Individual for Debtor (Dkt. 35).

18 The Debtor is currently not represented by counsel. A substitution of counsel was filed on
19 January 11, 2022 (Dkt. 91) and approved by court order on January 20, 2022 (Dkt. 108),
20 substituting in Iaian A. Macdonald of Macdonald Fernandez LLP as new counsel for Debtor,
21 replacing Dutchints’ original attorney, Geogg Wiggs of Law Offices of Geoff Wiggs. On April
22 20, 2022, Macdonald submitted his Motion to Withdraw as Counsel for the Debtor (Dkt. 171).
23 By order on April 28, 2022 (Dkt. 181), Macdonald’s motion was granted, providing that
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Macdonald continue representing Debtor until the earliest to occur of either Debtor's retention of new counsel, or May 18, 2022. To date, Debtor has not retained new counsel.

Upon Motion by the U.S. Trustee to Appoint Chapter 11 Trustee Under 11 U.S.C. 1104(a), or the Alternative, to Convert to Chapter 7 Pursuant to 11 U.S.C. 112(b) (Dkt. 95) and by order dated February 11, 2022, the Court converted the within case from chapter 11 to one under chapter 7 (Dkt. 127). An Interim Chapter 7 Trustee was appointed on February 11, 2022 (Dkt. 128).

On or about May 17, 2022, Nichani filed a Notice of Appearance and Request for Notice (Dkt. 199) for Tashjian. For the reasons explained below, Nichani now seeks to withdraw as counsel for Tashjian under California Rule of Professional Conduct 1.16(a)(4); 1.16(b)(4); and 1.16(b)(6).

II. California Rule of Professional Conduct 1.16

A. Rule 1.16(a)(4) of the California Rules of Professional Conduct states: "Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if... (4) the client discharges the lawyer." California Rule of Professional Conduct 1.16(a)(4).

On September 29, 2022, Nichani filed a Substitution of Attorney and [Proposed] Order Thereon for Tashjian (Dkt. 261), whereby Tashjian consents to Nichani's withdrawal. Due to the incorrect procedure of terminating representation, Nichani has filed this a motion. A copy of the Substitution of Attorney is attached to the Declaration of Nichani in Support as **Exhibit "A."**

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1 B. Rule 1.16(b)(4) of the California Rules of Professional Conduct states: “Except as stated
2 in paragraph (c), a lawyer may withdraw from representing a client if... (4) the client by other
3 conduct renders it unreasonably difficult for the lawyer to carry out the representation
4 effectively...” California Rule of Professional Conduct 1.16(b)(4).

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6 It unreasonably difficult for Nichani to carry out his representation effectively in this
7 matter. Irreconcilable differences have arisen between Tashjian and Nichani, and the attorney-
8 client relationship has irreparably broken down despite efforts to repair and maintain such
9 relationship. Due to the attorney-client privilege, Nichani is unable to further expand on the
10 difficulties related to representation.

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12 C. Rule 1.16(b)(6) of the California Rules of Professional Conduct states: “Except as stated
13 in paragraph (c), a lawyer may withdraw from representing a client if... (6) the client knowingly
14 and freely assents to termination of the representation...” (asterisks omitted) California Rule of
15 Professional Conduct 1.16(b)(6).

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17 As outlined above, Tashjian freely assents to termination of the attorney-client
18 relationship, as demonstrated by his execution of the September 29, 2022 Substitution of
19 Attorney.

20 D. California Rule of Professional Conduct 1.16(d) states: “A lawyer shall not terminate a
21 representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable
22 prejudice to the rights of the client, such as giving the client sufficient notice to permit the client
23 to retain other counsel, and complying with paragraph (e).” (asterisks omitted).

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California Rule of Professional Conduct 1.16(e) states:

Upon the termination of a representation for any reason:

- 1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings, exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably necessary to the client's representation, whether the client has paid for them or not; and
- 2) the lawyer promptly shall refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.

California Rule of Professional Conduct 1.16(e) (asterisks omitted).

Nichani has taken reasonable steps to avoid reasonably foreseeable prejudice to the right of the Tashjian. Tashjian may seek new counsel if he wishes to do so.

Lastly, Nichani will comply with California Rule of Professional Conduct 1.16(e), and Tashjian is aware that he will.

Therefore, pursuant to Rule 1.16 of the California Rules of Professional Conduct, Nichani is permitted to withdraw as counsel for Tashjian.

III. Future Mailings

Nichani requests that all further notices, pleadings, process and other papers addressed to Tashjian be served by mail to the following address:

Vahe Tashjian
901 Loyola Dr.
Los Altos, CA 94024

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1 **IV. Conclusion**

2 WHEREFORE, Vinod Nichani of Nichani Law Firm prays for entry of an order
3 permitting Nichani to withdraw as counsel for Vahe Tashjian, and for such other and further
4 relief as is appropriate in the premises.

5 Dated: October 4, 2022

NICHANI LAW FIRM

8 /s/ Vinod Nichani

9 VINOD NICHANI

10 Attorney for Vahe Tashjian, Individually

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Attorney for
VAHE TASHJIAN, INDIVIDUALLY

UNITED STATES BANKRUPTCY COURT
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In re

DUTCHINTS DEVELOPMENT, LLC

Debtor.

Case No.: 21-51255 MEH

Chapter 7

DECLARATION OF VINOD NICHANI IN
SUPPORT OF MOTION TO WITHDRAW AS
ATTORNEY OF RECORD FOR
RESPONSIBLE INDIVIDUAL VAHE
TASHJIAN

Hearing:

Date: TBD
Time: TBD
Location: Courtroom 11
280 S. First Street
San Jose, CA

Hon. M. Elaine Hammond

I, Vinod Nichani, declare:

1. I am an attorney dba Nichani Law Firm and counsel of record for for Vahe Tashjian
herein ("Tashjian"). The following facts are true and correct of my own personal knowledge. If
called upon as a witness, I would and could competently testify as follows:

2. Vahe Tashjian ("Tashjian") is the responsible individual for the Debtor herein.

1 3. On or about May 17, 2022, I filed a Notice of Appearance and Request for Notice (Dkt.
2 199) for Tashjian.

3 4. I now seek to withdraw as counsel for Tashjian. On September 29, 2022, I filed a
4 Substitution of Attorney and [Proposed] Order Thereon for Tashjian (Dkt. 261), whereby
5 Tashjian consents to my withdrawal, and that Tashjian intends to proceed pro se. The
6 Substitution of Attorney is attached hereto as Exhibit "A". The Court informed me that a motion
7 to withdraw as counsel was the correct procedure.
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9 5. It is unreasonably difficult for me to carry out representation of my client effectively, due
10 in part to irreconcilable differences between Tashjian and I, causing an irreparable breakdown in
11 the attorney-client relationship. Due to the attorney-client privilege, I am unable to further
12 expand on the difficulties related to representation.
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14 6. Tashjian freely assents to termination of the attorney-client relationship, as demonstrated
15 by his execution of the September 29, 2022 Substitution of Attorney.
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17 7. I have taken reasonable steps to avoid reasonably foreseeable prejudice to the right of the
18 Tashjian. Tashjian may seek new counsel if he wishes to do so.

19 8. I will comply with California Rule of Professional Conduct 1.16(e), and Tashjian is
20 aware that I will.

21 9. On October 4, 2022, I further informed Tashjian of my intent to file a motion to
22 withdraw. Tashjian has not yet responded.
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1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct, that I am over the age of eighteen, and that this declaration is executed on
3 October 4, 2022 at San Jose, California.
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6 /s/ Vinod Nichani
7 VINOD NICHANI
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EXHIBIT A

VINOD NICHANI|SBN 277607
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111 North Market Street, Suite 300
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Attorney for
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SUBSTITUTION OF ATTORNEY; ORDER
THEREON

TO THE HONORABLE M. ELAINE HAMMOND, UNITED STATES BANKRUPTCY
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE; AND ALL OTHER PARTIES
OF RECORD:

I. WITHDRAWING ATTORNEY

Name: Vinod Nichani dba Nichani Law Firm CA Bar Number: 277607

Firm: Nichani Law Firm

Address: 111 N. Market Street, San Jose, California 95113

Telephone: 408-800-6174

Fax Number: 408-290-9802

Email: vinod@nichanilawfirm.com

Counsel of Record for Vahe Tashjian , individually.

1 **II. NEW REPRESENTATION**

2 The party (Vahe Tashjian), represented by attorney seeking to withdraw, has not retained
3 new counsel and wishes to proceed pro se, as a self-represented litigant.

4 Name: Vahe Tashjian

5 Address: 901 Loyola Drive, Los Altos, CA 94024

6 Telephone: 650-245-0753

7 Email:

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10 **III. SIGNATURES**

11 Withdrawing Attorney:

12 I am currently counsel of record in this case, and am identified above in Section I as
13 “Withdrawing Attorney.”

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15 Date: September 29, 2022 /s/Vinod Nichani
16 VINOD NICHANI

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18 Party Represented by Withdrawing Attorney:

19 I am currently represented by the Withdrawing Attorney listed above. I consent to the
20 withdrawal of my current counsel and represent myself pro se in this case.

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22 Date: September 29, 2022 /s/Vahe Tashjian
23 VAHE TASHJIAN

ORDER

GOOD CAUSE APPEARING, the substitution of Vahe Tashjian, Pro Se, in the place of
Vinod Nichani of Nichani Law Firm, in respect to the representation of Vahe Tashjian, is
APPROVED.

Date: _____

UNITED STATES BANKRUPTCY
COURT JUDGE